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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID EARL SCHILTZ,

Defendant and Appellant.

In re DAVID EARL SCHILTZ
on Habeas Corpus.

D074116

(Super. Ct. No. SCN357452)

D074966

APPEAL from an order of the Superior Court of San Diego County, Carlos O. Armour, Judge, and petition for writ of habeas corpus. Order affirmed; petition denied.

David Earl Schiltz, in pro. per.; and Matthew R. Garcia, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

David Earl Schiltz appeals a postjudgment order revoking his probation and removing the stay on execution of the sentence that had been imposed. He also has filed

a separate petition for writ of habeas corpus, which petition we have consolidated with his appeal and decide in this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

In 2016, Schiltz willfully harassed another person and made a credible threat with intent to make that person afraid for her safety. An amended complaint charged Schiltz with three counts, including stalking in violation of Penal Code section 646.9, subdivision (a),¹ and alleged he had a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, 668) and served three prior prison terms (§§ 667.5, subd. (b), 668).

Pursuant to a plea agreement, Schiltz pleaded guilty to the stalking charge and admitted the truth of the prior prison term allegations, and the remainder of the charges and allegations were dismissed.² On September 16, 2016, the trial court imposed a sentence of three years for his stalking conviction and three consecutive one-year enhancements for his prior prison terms, for a total term of six years. The trial court suspended execution of that sentence and granted him formal probation for four years, subject to certain conditions.

In 2017, after Schiltz violated the conditions of his probation, the trial court revoked his probation and issued a bench warrant for his arrest. At a hearing on December 21, Schiltz waived his right to an evidentiary hearing and admitted he violated

¹ All statutory references are to the Penal Code.

² As Schiltz's appointed appellate counsel states, Schiltz represented himself during the proceedings in this case until the December 21, 2017 probation revocation hearing when he accepted appointment of counsel to represent him.

the conditions of his probation. The court accepted his admission, formally revoked his probation, lifted the stay on execution, and reaffirmed the imposition of his six-year prison term that had been originally imposed at his sentencing hearing on September 16, 2016.

On June 18, 2018, we granted Schiltz's request for constructive filing of his notice of appeal. On June 29, we issued an order limiting the issues on appeal to sentencing questions or other matters occurring after Schiltz's guilty plea that do not involve prior strike convictions.

DISCUSSION

I

Appeal

Schiltz's appointed counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal of the judgment, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). To assist our review, counsel identifies the following possible, but not arguable, issue: whether the trial court erred by failing to reinstate his probation.

We granted Schiltz permission to file a supplemental brief on his own behalf, but he did not file one. Instead, he apparently chose to file a petition for writ of habeas corpus, which petition we discuss below. A review of the record pursuant to *Wende* and *Anders* has disclosed no reasonably arguable appellate issues. Schiltz was competently represented by counsel on this appeal.

II

Petition for Writ of Habeas Corpus

On November 28, 2018, Schiltz filed a petition for writ of habeas corpus, raising 12 grounds for relief. In his petition, he states that he has not filed any other petitions in any other court raising those issues. A petition for writ of habeas corpus generally should be filed in the superior court in the first instance. (*In re Roberts* (2005) 36 Cal.4th 575, 593; *In re Steele* (2004) 32 Cal.4th 682, 688, 692; *In re Hillery* (1962) 202 Cal.App.2d 293, 294.) Accordingly, we exercise our discretion to deny his petition on the ground it was not presented in the superior court in the first instance. (*In re Ramirez* (2001) 89 Cal.App.4th 1312, 1316, 1320; *In re Hillery*, at p. 294.)

DISPOSITION

The order is affirmed. The petition for writ of habeas corpus is denied without prejudice to Schiltz's seeking relief in the Superior Court of San Diego County.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

AARON, J.